

DEC 27 1978 - 12 00 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Washington, D.C.

No.   
Date DEC 27 1978  
Fee \$ 50.00

ICC Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of 49 U.S.C. §11303 are the original and 15 counterparts of a Guaranty Agreement dated as of November 1, 1978.

A general description of the railroad rolling stock covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Guarantor: UNIMIN Corporation  
Greenwich Office Park Four  
Greenwich, Connecticut 06830

The undersigned is the Guarantor mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and 13 copies of the Guaranty Agreement to Ronald E. Roden, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

UNIMIN CORPORATION

By Kevin F. Crawford  
Its Vice President

GUARANTOR AS AFORESAID

Enclosures

RECEIVED  
FEE OPERATION BR.  
I.C.C.

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RECEIVED

Counterpart - C.P. Koppen

DESCRIPTION OF ITEMS OF EQUIPMENT

TYPE B EQUIPMENT

Manufacturer of Type B  
Equipment:

Portec, Inc.

Description and Mark and  
Number of Type B Items  
of Equipment:

75 100-ton 3,000 cu. ft. Covered  
Hopper Cars Marked and Numbered  
WW 1001 through WW 1075,  
both inclusive

Estimated Purchase Price  
of Type B Equipment:

\$37,391 per Item

Maximum Aggregate Purchase  
Price of Type B Equipment:

\$2,869,202

Place of Delivery:

Clinton, Illinois

Outside Delivery Date:

September 15, 1979

(WWR Trust No. 78-1)

DEC 27 1978 12 40 PM  
INTERNATIONAL COLLECTION

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GUARANTY AGREEMENT

Dated as of November 1, 1978

OF

UNIMIN CORPORATION

RE:

WINCHESTER AND WESTERN RAILROAD COMPANY

EQUIPMENT LEASE

Dated as of November 1, 1978

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(WWR Trust No. 78-1)  
(25 Box Cars and 75 Covered Hopper Cars)

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## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT dated as of November 1, 1978 is from UNIMIN CORPORATION, a Delaware corporation (the "Guarantor"), and is executed and delivered by the Guarantor for the benefit of the Trustee, the Trustor, the Assignee, the Investors (each as identified below) and their respective successors and assigns:

FOR VALUE RECEIVED, and as an inducement to and as part of the consideration for:

(i) the execution and delivery by First Security State Bank, in its individual capacity of the Trust Agreement dated as of November 1, 1978 (the "Trust Agreement") with the Trustor and the execution and delivery by First Security State Bank, not individually but solely as trustee (the "Trustee") under WWR Trust No. 78-1 (as defined in the Trust Agreement) of the Equipment Lease dated as of November 1, 1978 (the "Lease") between the Trustee and Winchester and Western Railroad Company, a Virginia corporation (the "Lessee"), a wholly owned subsidiary of the Guarantor providing for the lease of certain railroad equipment (collectively the "Equipment" or "Items of Equipment" and individually an "Item" or "Item of Equipment") more fully described in Schedule A to the Lease;

(ii) the execution and delivery by Dial Leasing Corporation (the "Trustor") of the Trust Agreement dated as of November 1, 1978 with the Trustee, which authorizes and directs the Trustee to enter into the Lease with the Lessee; and

(iii) the execution and delivery by the Trustor, the Trustee, First Security Bank of Utah, N.A., as agent and assignee for the Investors (the "Assignee"), Lease Investments Trust (the "Interim Investor") and Northwestern National Life Insurance Company (the "Permanent Investor") (the Interim Investor and the Permanent Investor being hereinafter referred to collectively as the "Investors") of a Participation Agreement dated as of November 1, 1978 (the "Participation Agreement") with the Lessee and the Guarantor, providing for the commitments, under the conditions therein provided, of the Trustor and the Investors to finance the

purchase price of the Equipment permitting the acquisition and leasing by the Trustee of the Equipment.

The Guarantor does hereby represent, warrant, covenant and agree with the Trustee, the Trustor, the Assignee and the Investors and their respective successors and assigns as follows:

SECTION 1. GUARANTY OF RENTAL AND LEASE OBLIGATIONS.

The Guarantor does hereby guarantee:

(a) the full and prompt payment when due of each and every installment or other payment of Interim and Fixed Rental (as defined in the Lease) pursuant to Section 2 of the Lease and any other rentals and all other payments (including without limitation any payments in respect of Casualty Occurrences or early termination due pursuant to Section 11 of the Lease and all damages under any of the provisions of Section 14 of the Lease) provided to be paid by the Lessee under the terms of the Lease, whether during the original term of the Lease or during any renewal term thereof, all at the time and place and to the person entitled thereto under the terms of the Lease;

(b) in addition to the obligations to pay the amounts guaranteed in paragraph (a) above, the full and prompt performance and observance by the Lessee of each and all of the other covenants and agreements required to be performed or observed by the Lessee under the terms of the Lease; and

(c) payment, upon demand by the Trustee, the Trustor or the Assignee, of all costs and expenses, legal or otherwise (including reasonable attorneys' fees), as shall have been expended or incurred in the seizure, rental or sale of any Item of Equipment as a result of an Event of Default under the Lease or in the protection or enforcement of any right or privilege under the Lease or in the protection or enforcement of any rights, privileges or liabilities under this Section of this Agreement or action in connection therewith.

SECTION 2. GUARANTY OF INDEMNITY AND OTHER OBLIGATIONS.

The Guarantor does hereby further guarantee:

(a) the full and prompt payment when due by the Lessee of each and every payment of indemnity

and other sums pursuant to the Participation Agreement, all at the time and place and to the person entitled thereto under the terms of the Participation Agreement;

(b) in addition to the obligations to pay the amounts guaranteed in paragraph (a) above, the full and prompt performance and observance by the Lessee of each and all of the other covenants and agreements required to be performed or observed by the Lessee under the terms of the Participation Agreement; and

(c) payment, upon demand by the Trustee, the Trustor or the Assignee, of all costs and expenses, legal or otherwise (including reasonable attorneys' fees), as shall be expended or incurred in the protection or enforcement of any right or privilege under the Participation Agreement which the Lessee is obligated to protect or enforce or in the protection or enforcement of any rights, privileges or liabilities under this Section or action in connection therewith.

### SECTION 3. GENERAL PROVISIONS RELATING TO THE GUARANTY.

(a) Each and every Event of Default as defined in Section 14.1 of the Lease and each and every default in payment or performance of any obligation of Lessee under the Participation Agreement shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.

(b) The guaranty hereunder shall be a continuing, absolute and unconditional and irrevocable guaranty of payment and performance as aforesaid and shall remain in full force and effect until the obligations of the Lessee shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Lease and the Participation Agreement, and the Guarantor shall have fully and satisfactorily discharged all of its obligations under this Agreement.

(c) The guaranty and the liability of the Guarantor hereunder shall remain in full force and effect irrespective of the genuineness, validity, regularity or enforceability of the Lease or of any assignment, subleasing or termination of the Lease or the Participation Agreement and shall in no wise be affected or impaired by (and no notice to the Guarantor shall be required in respect of) any compromise, waiver, settlement, release, renewal, extension, indulgency, change in or modification of any of the obligations and liabilities of the Lessee under the Lease or the Participation Agreement or by any redelivery, repossession, surrender or destruction of any Item of Equipment

or all of the Equipment, or the transfer, assignment, subletting or mortgaging or the purported transfer, assignment, subletting or mortgaging of all or any part of the interest of the Lessor or the Lessee in the Equipment or any failure of title with respect to the Lessor's or the Lessee's interest in the Equipment, or by any failure, neglect or omission on the part of the Lessor or any other person to give the Guarantor notice of any default by the Lessee under the Lease or the Participation Agreement, or to realize upon any obligations or liabilities of the Lessee, nor shall the obligation and liability of the Guarantor hereunder be impaired, diminished, abated or otherwise affected by any set-off, defense or counterclaim which the Lessee or the Guarantor may have or claim to have, at any time or from time to time or by the commencement by or against the Lessee or the Guarantor of any proceedings under any bankruptcy or any other insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws; it being the intent and purpose hereof that the Guarantor shall not be entitled to and do hereby waive any and all defenses available to guarantors, sureties and other secondary parties at law or in equity; provided, however, that in the event the Trustee or the Assignee shall willfully and wrongfully interfere with the Lessee's right of quiet use, possession and enjoyment of the Equipment, then the Guarantor shall be permitted to assert such interference as a defense to its obligations under Section 1 hereof against such person or persons so interfering, but no such defense against any such party shall constitute a defense against any other such party which shall not have so interfered. In order to hold the Guarantor liable hereunder, there shall be no obligation on the part of the Trustee or the Assignee or any other person at any time to demand or resort for payment or performance to the Lessee or to any other person or corporation, their properties or assets or to any security, property or other rights or remedies whatsoever, and the Trustee and the Assignee and each other person entitled to receive payments or the benefit or performance guaranteed hereunder shall have the right to enforce this guaranty irrespective of whether or not proceedings or steps are pending, which seek resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, the Lessee shall default under the terms of the Lease and/or the Participation Agreement and that notwithstanding recovery hereunder for or in respect of any given default or defaults by the Lessee under the Lease and/or the Participation Agreement, this guaranty shall remain in force and effect and shall apply to each and every subsequent default. So long as an Event of Default under Section 14.1 of the Lease shall have occurred and be continuing, any claim against the Lessee by way of subrogation or otherwise which the Guarantor shall have by reason of any payment to the Trustee or the Assignee or any other person pursuant to this Agreement shall not be asserted, enforced or collected as against (or to the detriment of) the Lessee (including without limitation, any liquidator, trustee in bankruptcy, assignee for

the benefit of creditors or receiver of property or assets of the Lessee), the Trustee or the Investors or such person in any action, suit or proceeding.

(d) Except as otherwise provided in Section 4(c) above, no act or omission of any kind or at any time on the part of the Trustee, the Trustor or the Investors or any other person in respect of any matter whatsoever shall in any way affect or impair the guaranty.

(e) The payment by the Guarantor to the Trustee or the Assignee of any amount pursuant to this Agreement shall not in any wise entitle the Guarantor (whether by way of subrogation or otherwise) to any right, title or interest of either Trustor, the Trustee or the Assignee or any such person under the Lease or the Participation Agreement.

This guaranty and every part hereof shall be binding upon the Guarantor and its successors and assigns, and shall inure to the benefit of, and shall be directly enforceable by, the Trustee, the Trustor or the Assignee and their respective successors and assigns.

The obligations of the Guarantor set forth in this Agreement do not constitute a guarantee of a residual value in the Equipment or of payment of the Conditional Sale Indebtedness under the Conditional Sale Agreement (as each such term is defined in the Participation Agreement).

This guaranty shall be governed by and construed in accordance with the laws of the State of Connecticut.

IN WITNESS WHEREOF, the Guarantor has caused this instrument to be executed as of this 1st day of November, 1978.

UNIMIN CORPORATION

By Karin F. Seawford  
Its Vice President

[SEAL]

ATTEST:

Mary Jane Linsley  
Secretary

STATE OF CONNECTICUT            )  
  )   SS Greenwich  
COUNTY OF FAIRFIELD            )

On this 26th day of December, 1978, before me personally appeared Kevin F. Crawford, to me personally known, who, being by me duly sworn, says that he is the Vice President of UNIMIN, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kevin F. Crawford  
Vice President

Tilda B. Fico  
Notary Public

(NOTARIAL SEAL)

TILDA B. FICO  
Notary Public, Fairfield County  
My Commission Expires April 1, 1981

My Commission Expires: